BEFORE THE HIGH COURT OF JUDICATURE CHHATTISGARH

AT BILASPUR (C.G.)

In the matter of W.P.No. 2698 2003

PETITIONER Hridyanand Tiwari, Aged about 36 yrs.
S/o Shri Nageshwar Tiwari
R/o Namnakala, Ambikapur,
Distt. Sarguja.

VERSUS

RESPONDENTS

R1. State of Chhattisgarh
Through Secretary Transport,
D.K.S. Bhawan, Mantralaya,
Raipur (C.G.)

P. R. No. 2698/03
Presented by Shri R.N.P. Agrawal
dated 06/06/03

R2. State Transport Appellate Tribunal,
Near D.K.S. Bhawan, Mantrayala,
Mahanadi Khand, Room No.11, 12,
Raipur (C.G.)

R3. State Transport Authority,
E.A.C. Colony, Behind Collectorate,
Raipur (C.G.)

RECEIVED COPY.
CLERK TO A.G. BILASPUR
06/06/03

R4. Basant Roadways, Through Arun Kumar
Agrawal (Partner)
"Seth Basant Lal Marg" Ambikapur

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS AND/OR ANY OTHER WRIT/COMMAND OF LIKE NATURE

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2698 of 2003

Hridyanand Tiwari

- Versus -

State of Chhattisgarh & others

POST FOR ORDER ON 17th JANUARY, 2005

Sd/-
L.C.BHADOO
Judge

17.1.2005

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.2698 of 2003

Hridyanand Tiwari

- Versus -

State of Chhattisgarh & others

Present: -

Shri Anand Kumar Tiwari, Advocate: For the petitioner.

Shri N. K. Agrawal, Deputy Advocate General: For the State/respondents 1 to 3.

Shri B. P. Gupta, Advocate: For respondent No.4.

O R D E R

(Passed on 17th January, 2005)

L.C. BHADOO, J.

By this writ petition filed under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 5th August 2003 passed by the S.T.A.T./ respondent No.2 in revision No.253/2003 whereby the learned authority by allowing the revision cancelled the permit granted in favour of the petitioner by respondent No.3 State Transport Authority.

(2) Brief facts leading to filing of this writ petition are that the petitioner being the resident of Ambikapur applied for regular permit before the S.T.A. Raipur for plying the bus between Ambikapur to Gaya. The petitioner was already plying the bus on this route on temporary permit, therefore, he filed an application for regular permit and as per the averments made in the petition that as per the reciprocal agreement entered into between erstwhile State of M.P. and Bihar route was already existing. The petitioner was granted permit by respondent No.3, but

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respondent No.4 raised an objection and that was rejected. Being aggrieved by that order respondent No.4 preferred a revision before respondent No.2 and the same was allowed.

(3) As per the petitioner's case State of M.P. and State of Bihar entered into a reciprocal agreement in the year 1979 allowing inter-state plying of buses on the route Ambikapur to Gaya via Ramanujganj-Aurangabad. The agreement came into force in the month of October 1979 and was published in the Gazette on 28th September 1979. The agreement entered into between the two States was in accordance with the provisions of Section 63 of the old Act and Section 88 of the New Motor Vehicles Act, which is Annexure-P/2. In the year 1996 both the States i.e. State of M.P. and State of Bihar further published the proposal for extension of such agreement and publication of the same was made in the State of Bihar on 24th February 1996. Copies of the Gazette publications are Anexure-P/4 and P/5. The petitioner was plying the bus on the route of Ambikapur to Gaya on a temporary permit which was granted to the petitioner on 5th October 2002 to 31st October 2002 which was extended up to November 2002. Vide application dated 13th November 2002 the petitioner applied for regular permit. Copy of the same is Annexure-P/7. On 9th December 2002 the said application was put up in the meeting and order for grant of permit was passed on 20th January 2003 (Annexure-P/8). After division of the State of Madhya Pradesh in the year 2000 into Madhya Pradesh and Chhattisgarh, as per M.P. Re-organization Act, 2000, by Section 79 of the M.P. Re-organization Act State of Chhattisgarh adopted all existing laws, copy of the same is Annexure-P/9. The respondent No.4 being a transporter plying vehicle between the two States i.e. State of Chhattisgarh and State of Jharkhand (erstwhile Bihar) had applied for renewal of a permit for the route of Ambikapur to Daltanganj via Ramanujganj. This permit was applied by him on 14-6-2001 and order for renewal was passed on 25-8-2001. The condition of the permit was that the respondent No.4 had to avail the permit within 30 days of the order after furnishing No Objection Certificate

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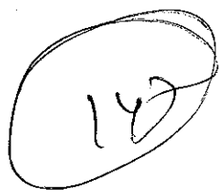
regarding taxation failing which permit will be cancelled automatically, but he failed to take action within 30 days. Despite this, for reasons best known to the respondents, the permit was signed by respondent No.3 on 28-6-2002, copy of the same is Annexure-P/12.

(4) Reply has been filed on behalf of respondent No.4 in which it has been mentioned that vide Annexure-P/2 only two permits were available on the route Gaya to Ambikapur which are being held and operated by one Chauhan Bus Service and other by Mohd. Baidul and in the alternative, by Khursid Alam. There was no provision for any more permit under the agreement. The respondent No.4 is having an interstate regular permit on the route Ambikapur to Daltanganj. The route of the permit of respondent No.4 is a major part of the route Gaya-Ambikapur, and the in-coming timings as applied by the petitioner is ahead of respondent No.4 timing only five minutes up to ten minutes for whole of the route, hence he made the objection and the petitioner's application has been rightly rejected.

(5) I have heard learned counsel for the parties.

(6) Learned counsel for the petitioner argued that earlier permit was granted to one Shri Navin Kumar Sinha from Ambikapur to Gaya. As he could not ply the vehicle, the permit was granted to the petitioner against the vacancy of Sinha, therefore, respondent No.4 could not have any objection. Moreover, he had not applied and he was not a party for Ambikapur to Gaya route.

(7) On the other hand, learned counsel for respondent No.4 argued that as per the reciprocal agreement Annexure-P/2 entered into between erstwhile State of M.P. and Bihar in the year 1979, and as per scheme of the route two single trips were available from Ambikapur to Gaya to the State of M.P. and two single trips were available for the State of Bihar from Gaya to Ambikapur. As there were already two permit holders namely one Chauhan Bus Service and other is Mohd. Baidul, therefore, there was no



occasion for the S.T.A., Raipur to grant permit to the petitioner herein, as there was no vacancy on this route.

(8) No reply has been filed on behalf of the petitioner to the return of respondent No.4. During the course of arguments, learned counsel for the petitioner submitted that the petitioner was granted permit in the vacancy of Navin Kumar Sinha and Chauhan Bus Service and Mohd. Baidul were granted permit of the State of Bihar from their quota, as such objection of respondent No.4 is without any justification.

(9) Having heard learned counsel for the parties, I have perused the records. It is an admitted position that as per the agreement Annexure-P/2 entered into between the erstwhile State of M.P. and Bihar permits were to be granted on the route Ambikapur to Gaya and Gaya to Ambikapur and two permits were fell in the share of each of the States i.e. State of M.P. and State of Bihar, therefore, the S.T.A., Raipur was entitled to allot only two permits. As has been held by the Hon'ble Apex Court in the matter of **Ashwani Kumar and another v. Regional Transport Authority, Bikaner and another** reported in **AIR 1999 SUPREME COURT 3888** that for grant of interstate permit pre-condition and sine qua non is that 'there must be existing permits based on reciprocal agreement entered into between the parties.' In this case, only two permits were available for grant by the S.T.A., Raipur, from Ambikapur to Gaya route. The respondent No.4 in his reply has stated that those two permits were already granted to Chauhan Bus Service and Mohd. Baidul which has not been replied by the petitioner by filing the rejoinder. There is nothing on record, which clears the position, and even this aspect has not been considered by the S.T.A. while granting permit. It is also an admitted position that as far as grant of permit to Navin Kumar Sinha is concerned, he never operated the bus and he never got countersigned the permit. As far as increase of the permits is concerned, through Annexures-P/4 and P/5, proposal for increase of the permit was published, but thereafter there is nothing on record which goes

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to show that in pursuance of those proposal whether permits were increased by the State of Bihar and State of M.P..

(10) In the result, the writ petition is allowed. The impugned order of the S.T.A.T. dated 5th August 2003 is set aside and the matter is remanded back to the S.T.A., Raipur. The S.T.A., Raipur is directed to decide the matter afresh after hearing the parties in accordance with law. While deciding the application of the petitioner for grant of permit from Ambikapur to Gaya, the S.T.A., Raipur will first ascertain as to whether any vacancy is available in Ambikapur to Gaya route considering two permits. Parties are directed to appear before the S.T.A., Raipur on 21st February 2005 and the S.T.A., Raipur shall take decision on the application of the petitioner within another one month.

Sd/-
L.C.BHADOO
Judge

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